APPEAL NO. 040292
FILED MARCH 16, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on January 6, 2004. The hearing officer determined that the appellant's (claimant) date of injury (DOI) was _____, pursuant to Section 408.007; that the claimant did not sustain a compensable repetitive trauma injury; that the claimant gave timely notice of her claimed injury pursuant to Section 409.001; that the respondent's (carrier) second Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) was not based on newly discovered evidence; and that the carrier's defense of compensability is limited to the first TWCC-21 filed with the Texas Workers' Compensation Commission (Commission). The issues of DOI, timely notice to the employer, and limitation of the defense of compensability have not been appealed and have become final pursuant to Section 410.169.

The claimant appeals the injury determination, basically on sufficiency of the evidence grounds, asserting that her left arm is getting worse and that her work provokes her injury. The carrier responds, urging affirmance.

DECISION

Affirmed.

The claimant, an employee benefits representative, asserts she sustained a repetitive trauma injury when she was assigned a special project setting up files. The claimant brought a sample file to the CCH and both testified and demonstrated exactly what she was doing that caused the claimed injury. The hearing officer noted that the injury report said the claimant was doing data entry but that "it is clear from the testimony [and demonstration] that the Claimant began feeling symptoms while creating new folders not performing data injury [sic entry]." The hearing officer went on to find that the claimant's work activity (while perhaps repetitive) "did not require physically traumatic use of her left upper extremity."

Section 401.011(36) provides that a repetitive trauma injury means "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." (Emphasis added.) The claimant has the burden to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Company v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). The hearing officer found that the claimant's job duties were not physically traumatic in character. The hearing officer had the benefit of not only hearing the claimant's testimony but also observing the claimant's demonstrated duties.

It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who resolves the conflicts and inconsistencies in the evidence Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **UNITED STATES FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

PAUL DAVID EDGE
6404 INTERNATIONAL PARKWAY, SUITE 1000
PLANO, TEXAS 75093.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

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Robert W. Potts
Appeals Judge